



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>**

November 18, 2003

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Bonnie Nepstad, Registered Agent for  
Nepstad Oil Company, Inc.  
RR 1 Box 89  
Grandin, ND 58038

Re: In the Matter of Maple Valley Ag Products, Nepstad Oil Company,  
Inc., Grandin Stop and Shop and Hunter Facilities  
Docket No. CWA-08-2004-0011  
Administrative Complaint and Notice of Opportunity for Hearing

Dear Ms. Nepstad:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Nepstad Oil Company, Inc., pursuant to its authority under section 311(b)(6)(B)(ii) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(ii). EPA alleges in the Complaint that Nepstad Oil Company's Grandin Stop and Shop facility located at RR 1 89, Grandin, North Dakota, and Hunter facility located at 303 Main Street, Hunter, North Dakota, are in violation of the oil pollution prevention requirements set forth at 40 C.F.R. part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

Specifically, the Complaint alleges that Nepstad Oil Company, Inc., failed to prepare and implement a Spill, Prevention, Control and Countermeasures ("SPCC") plan for the Grandin and Hunter facilities in writing and in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during an unannounced SPCC inspection of the Grandin and Hunter facilities on September 18 and 16, 2002, respectively. The Complaint proposes a total penalty up to \$47,860 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's



administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 C.F.R. § 22.17. This judgement may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing. Public Notice of and reasonable opportunity to comment on the proposed issuance of an order assessing a class II civil penalty is being provided pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C). If no hearing is held under section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(iii).

If you have any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Jane Nakad. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Nakad is in our Technical Enforcement Program and can be reached at (303) 312- 6202.

We urge your prompt attention to this matter.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Notice of SEC Disclosure  
Public Notice

cc: Allen Nepstad, Nepstad Oil Company, Inc.  
Raymond Lambert, State of North Dakota Fire Marshall

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF	)	Docket No. CWA-08-2004-0011
	)	
Nepstad Oil Company, Inc.	)	<b>ADMINISTRATIVE COMPLAINT AND</b>
RR 1 Box 89	)	<b>OPPORTUNITY TO REQUEST HEARING</b>
Grandin, ND 58038	)	
	)	Proceeding to Assess Class II
Grandin Stop and Shop and	)	Civil Penalty Under Section 311
Hunter Facilities	)	of the Clean Water Act
	)	
Respondent.	)	

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**AUTHORITY**

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

2. Respondent Nepstad Oil Company, Inc., is a corporation organized under the laws of and is authorized to do business in the State of North Dakota.

3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. Respondent owns and operates a retail and bulk fuel distribution facility located at RR 1 89, Cass County, Grandin, North Dakota, generally known as the Stop and Shop (hereafter “Grandin facility”). The Grandin facility includes, but is not limited to, two diesel tanks with a combined capacity of 9,500 gallons and two gasoline tanks with a combined capacity of 18,000 gallons.

5. Respondent owns and operates a bulk fuel and fertilizer distribution facility located at 303 Main Street, Hunter, Cass County, North Dakota (hereafter referred to as the “Hunter facility”). The Hunter facility includes, but is not limited to, seven diesel tanks with a total capacity of 100,000 gallons and five tanks with a combined capacity of 75,000 gallons.

6. Diesel and gasoline are oils within the meaning of “oil” as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

7. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the Grandin and Hunter facilities (hereafter referred to collectively as the “facilities”).

8. Respondent is an "owner and operator" of two "onshore facilities" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).

9. The facilities are “non-transportation related” “onshore facilities” within the meaning of 40 C.F.R. § 112.2.

10. The facilities have a total above-ground oil storage capacity greater than 1,320 gallons.

11. The Grandin facility is located adjacent to a county storm water ditch that discharges into the Elm River, a perennial stream, approximately one half mile to the north.

12. The Hunter facility is located adjacent to a county storm water ditch that

discharges into the South Branch of the Elm River, a perennial stream, approximately one half mile to the south.

13. The county storm water ditches, the South Branch of the Elm River, the Elm River and tributaries thereto, are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

14. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . . ."

15. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines...

16. The facilities are non-transportation onshore facilities which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

17. The facilities are subject to the oil pollution prevention requirements of 40 C.F.R.

part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

18. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare a written Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with applicable sections of part 112 including, but not limited to, sections 112.7 and 112.8.

19. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

20. On or about September 18, 2002, an authorized EPA inspector entered the Grandin facility with the consent of Respondent to inspect it for compliance with the CWA and SPCC regulations.

21. At the time of the inspection, the Grandin facility had a total oil storage capacity of approximately 27,500 gallons.

22. The following SPCC implementation measures were found to be deficient at the time of the Grandin facility inspection :

- a. inspections not performed according to written procedures. No documentation of inspections maintained;
- b. no regular inspections of aboveground tanks performed. No documentation of inspections maintained;

- c. no warning or barrier system to prevent premature departures of trucks during loading/unloading;
- d. no SPCC training of facility personnel;
- e. no discharge prevention meetings held; and
- f. oil storage equipment was unfenced.

23. The Grandin facility SPCC plan was reviewed and found to be inadequate as follows:

- a. written inspection procedures and record keeping;
- b. personnel training;
- c. SPCC Plan did not designate a person responsible for spill prevention;
- d. discharge prevention meetings; and
- e. drainage from diked areas.

24. The Grandin facility SPCC plan was not certified by a Professional Engineer or approved and signed by a management level representative.

25. On or about September 16, 2002, an authorized EPA inspector entered the Hunter facility to inspect it for compliance with the CWA and SPCC regulations.

26. At the time of the inspection, the Hunter facility had a total oil storage capacity of approximately 175,000 gallons. Although the inspector was informed that the Hunter facility was out-of-service, the tanks had not been properly closed and were capable of storing oil as evidenced by the existing piping, man-ways, and other bulk storage-related equipment.

27. The Hunter facility did not have a written SPCC Plan at the time of the inspection.

28. The following SPCC implementation measures were found to be deficient at the



time of the Hunter facility inspection:

- a. inspections not performed according to written procedures. No documentation of inspections maintained;
- b. no regular inspections of aboveground tanks, piping and valves. No documentation of inspections maintained;
- c. no warning or barrier system to prevent premature departure of trucks during loading/unloading;
- d. no SPCC training of facility personnel;
- e. no discharge prevention meetings held;
- f. oil storage equipment not fenced;
- g. facility has no established procedures for draining rainwater from secondary containment and no records of drainage events;
- h. no secondary containment for loading/unloading areas;
- i. undiked areas of the facility do not drain to a pond, basin, or equivalent catchment device;
- j. inadequate/compromised secondary containment for fuel storage tanks due to containment breach in several locations;
- l. pipe supports in several sections are inadequate as evidenced by bowed pipes
- m. container master flow control valves were not secured; and
- n. fuel storage area not adequately lighted.

29. Respondent failed to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3 for the Grandin and Hunter facilities.

30. Respondent's failure to prepare and implement an SPCC plan for the Grandin and Hunter facilities in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 from September 16, 2002, through and including November 17, 2003 (a duration of approximately 397 days) constitutes four violations of 40 C.F.R. § 112.3 and section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C).

31. As alleged herein and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4 Respondent is liable for civil penalties up to \$11,000 per day during which the violation continues, up to a maximum total of \$137,500 for all violations.

#### **PROPOSED CIVIL PENALTY**

32. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$47,860. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors

as justice may require. Specifically, the proposed penalty amount is based on Respondent's moderate non-compliance and moderate environmental impact for a duration of at least 14 months with a major degree of culpability. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

#### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

33. If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check, to:

Jane Nakad  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

34. Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST A HEARING**

35. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)  
Legal Enforcement Program  
U.S. EPA Region 8,  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
Telephone: (303) 312-6906

**IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.**

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

### **PUBLIC NOTICE**

36. Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

### **SETTLEMENT CONFERENCE**

37. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you (or your attorney if you choose to be represented by one) have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

Date: **11/17/03**

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Date: **11/17/03**

**SIGNED**

Amy Swanson, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466  
Colorado Atty. Reg. No. 26488  
Telephone: 303/312-6906  
Facsimile: 303/312-6953

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Bonnie Nepstad, Registered Agent for  
Nepstad Oil Company, Inc.  
RR 1 Box 89  
Grandin, ND 58038

11/18/03 \_\_\_\_\_  
Date

SIGNED \_\_\_\_\_  
Judith McTernan

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8**  
**999 18th Street, Suite 300, Denver, CO 80202-2466**

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND  
OPPORTUNITY TO COMMENT ON CWA COMPLAINT**

**Action:** EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment (complaint) for alleged violations of the Clean Water Act.

**Summary:** EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding, if any. The deadline for submitting public comment is thirty days after issuance of this notice.

On November 18, 2003, EPA commenced a civil administrative action by filing a complaint against the Respondent identified below, alleging violations of the CWA and its regulations. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of:      Nepstad Oil Company  
                                 RR 1 89  
                                 Grandin, North Dakota

Nepstad Oil Company  
303 Main Street  
Hunter, North Dakota

EPA Docket Number: CWA-08-2004-0011

Proposed penalty in the Complaint: \$47,860.00

Alleged violations: Failure to prepare and implement Spill Prevention Control and Countermeasure Plans for its Grandin and Hunter facilities in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3, regulations issued under Section 311(j) of the CWA.

Submit written comments to:      Tina Artemis  
   Regional Hearing Clerk (8RC); EPA Region 8  
   999 18th Street, Suite 300;  
   Denver CO 80202-2466  
Telephone:      (303) 312-6765.

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the Consolidated Rules, the Complaint, or other documents in this proceeding, or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Region 8 Hearing Clerk Office identified above and the file will be open for



public inspection during normal business hours. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 18, 2003.**